

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF SOUTH DAKOTA

TERRI BRUCE,

PLAINTIFF,

VS.

NO. 17-5080

STATE OF SOUTH DAKOTA

and LAURIE GILL, in her official

capacity as Commissioner of the

South Dakota Bureau of Human

Resources,

DEFENDANT.

DEPOSITION OF DR. GEORGE BROWN, M.D.

AUGUST 20, 2018

Johnson City, Tennessee

9:00 a.m.

Reported By:

PEGGY F. MCCRORY, LCR #532

<p style="text-align: right;">Page 2</p> <p>1 Appearances: 2 3 On Behalf of the Plaintiff: 4 American Civil Liberties Union Foundation 125 Broad Street, 18th Floor 5 New York, NY 10004 BY: JOSHUA A. BLOCK, ESQ. 6 lcooper@aclu.org 7 On Behalf of the Defendant: 8 Jerry Johnson Law Office 909 St. Joseph Street, Suite 800 9 Rapid City, South Dakota 57701 BY: JERRY D. JOHNSON, ESQ. 10 jdjbjck@aol.com 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 EXAMINATION BY 2 MR. JOHNSON: 3 Q State your name for the record, please. 4 A George R. Brown, M.D. 5 Q And the records reflect that we're here to 6 take the deposition of Dr. Brown pursuant to notice. 7 Dr. Brown, you've had your deposition 8 taken before? 9 A Yes, I have. 10 Q Okay. So you know the rules; I'll ask 11 questions and you have to answer verbally? 12 A Yes. 13 Q It will help the court reporter if neither 14 one of us nod our head or say huh-uh or uh-huh. Just answer 15 verbally. 16 A Yes. 17 Q At some point during this deposition I 18 will probably ask a question that makes no sense, and if that 19 happens, you let me know and I will rephrase it. Fair enough? 20 A Yes. 21 Q And if during this deposition it appears 22 though I misunderstood one of your answers, will you bring that 23 to my attention as well and we'll clear that up? 24 A Yes. 25 Q Okay. And you're kind of soft spoken, I</p>
<p style="text-align: right;">Page 3</p> <p>1 S T I P U L A T I O N 2 The deposition of DR. GEORGE BROWN, M.D., 3 called as a witness at the instance of the defendants, for 4 purposes of discovery, pursuant to the Federal Rules of Civil 5 Procedure, taken by agreement on the 20th day of August, 2018, 6 at the Carnegie Hotel, 1216 State of Franklin Road, Johnson 7 City, Tennessee, before Peggy F. McCrory, Registered 8 Professional Reporter and Notary at Large. 9 It being agreed that Peggy F. McCrory, 10 Registered Professional Reporter and Notary at Large, may swear 11 the witness, report the deposition in machine shorthand, 12 afterwards reducing the same to typewriting. 13 All objections except as to the form of the 14 questions are reserved to on or before the hearing. 15 It being further agreed that all formalities 16 as to the notice, caption, certificate, transmission, et cetera, 17 are expressly waived. 18 DR. GEORGE BROWN, M.D., 19 called as a witness at the instance of the defendants, for 20 purposes of discovery, having been first duly sworn, was 21 examined and deposed as follows: 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 can tell, and I talk kind of fast -- 2 A Not normally. I'm not normally soft 3 spoken. I'm sick today. 4 Q Okay. All right. Sorry about that. 5 I talk kind of fast. So I will try and 6 slow down and you try and talk a little louder, okay? 7 A Yes. 8 Q You are a professor here at the medical 9 school in Johnson City, Tennessee? 10 A Yes. I am professor and associate 11 chairman at the medical school. It's literally a tenth of a 12 mile from where we're sitting. 13 Q Okay. And you've been hired as an expert 14 on behalf of the plaintiff, Mr. Bruce? 15 A Correct. 16 Q When were you first contacted about this 17 lawsuit? 18 A Probably sometime in late 2017, best of my 19 recollection. 20 Q And do you remember who contacted you? 21 A I believe it was Mr. Block. 22 Q Okay. Up to that point in time had you 23 ever worked with Mr. Block before? 24 A Yes, I have. 25 Q And how many times?</p>

<p style="text-align: right;">Page 58</p> <p>1 reassignment surgery, which types of surgery are most 2 appropriated and what types of physician criteria and care 3 settings are needed to ensure that patients achieve improved 4 health outcomes." 5 That was part of the decision summary of 6 the 2016 memo decision, correct? 7 A Correct. 8 Q And you didn't cite any of that language 9 in your first report, did you? 10 A No. 11 Q You just cited the 2014 decision. 12 A Right. 13 Q Do you think that the conclusions and 14 viewpoints of the CMS board in 2016 represents a fringe 15 viewpoint? 16 MR. BLOCK: Objection as to the term "CMS 17 board." It's not the board. 18 BY MR. JOHNSON: 19 Q Okay. Do you believe that the 2016 CMS 20 decision represents a fringe viewpoint? 21 A Are you speaking to something specific in 22 the 72 pages or the entire 72-page document? 23 Q Well, you read that decision. Do you 24 think that summary decision represents a fringe viewpoint? 25 A I need you to focus more on what you're</p>	<p style="text-align: right;">Page 60</p> <p>1 Q Value to you in your practice. Value to 2 Dr. Schechter in his practice. 3 A Well, it's pretty dated at this point. I 4 mean, they're relying on things well before 2016. So it has 5 some value maybe up to that point in time. But obviously things 6 have proceeded and progressed since then. There are a number of 7 big studies, including my own, that have come out since this 8 study. Outcome studies that have come out since this study. So 9 it's one snapshot in time. So it's, at this point, almost a 10 historical document. 11 Q August of 2016 is now a historical 12 document. 13 A A rapidly evolving field. 14 Q Was the 2014 document you cited in your 15 report a historical document? 16 A Based on the dates, it's historical. 17 That's what you have to work with. 18 Q And you cited it because it supported your 19 opinion, isn't that right? 20 A I'm not saying I disagree with the opinion 21 that there are evidence gaps in the 2016 decision. 22 Q You cited the 2014 decision in support of 23 your opinion. 24 A Yes. 25 Q And that document obviously is older than</p>
<p style="text-align: right;">Page 59</p> <p>1 asking me. Because there's a lot of material here. 2 Q Okay. What I'm asking you is, and the 3 reason why is, you called the experts of the defendants 4 representing a fringe viewpoint. And I'm asking you -- you've 5 read that decision -- 6 A I would argue that they're actually not 7 experts in this case. But that's a different question. 8 Q You understand the question, don't you? 9 A No, I don't. 10 Q Okay. The question is, looking at that 11 2016 memo decision and reading the summary of it, do you think 12 that summary represents a fringe viewpoint? 13 A No. I don't believe it represents a 14 fringe viewpoint in that everybody says in all areas of medicine 15 it's the practice of medicine and we incrementally improve what 16 we do in all fields of medicine, including gender dysphoria, by 17 doing yet better and more studies going forward whether it's 18 bariatric surgery, whether it's psychiatry, whether it's gender 19 dysphoria. So I would not take issue with any conclusion that 20 says filling evidence gaps. There's evidence gaps in every area 21 of medicine we do. 22 Q Okay. Do you think that 2016 decision has 23 any value in the field of medicine? 24 A I'm having trouble with the question. 25 Valuing -- value to who in what way?</p>	<p style="text-align: right;">Page 61</p> <p>1 the 2016 memo decision. 2 A I can cite literature going back to 1997 3 that supports my opinion. 4 Q And the 2014 decision is older than the 5 2016 memo decision, isn't it? 6 A Chronologically, yes. 7 Q And according to that 2016 memo decision, 8 that was issued on August 30, 2016, correct? 9 A Yes. 10 Q Are you saying that the CMS don't do a 11 thorough research of the studies and the research up to the date 12 of its decision? 13 A I wasn't involved in that process so I 14 can't comment. 15 Q Okay. Any of your work that you're 16 referring to as studies you've done prior to August 30 of 2016? 17 A Yes. 18 Q Is it cited in there by the CMS in the 19 2016 decision? 20 A I don't know. I would be happy to look. 21 Q Take a break, you can take a look. 22 Don't you keep up on the literature in 23 your field? 24 A I do keep up with the literature in my 25 field. But if you're asking me if I know everything that's ever</p>

16 (Pages 58 - 61)

<p style="text-align: right;">Page 90</p> <p>1 designing studies and critiquing methodologies. In fact, I</p> <p>2 teach that course, you know, at a medical school.</p> <p>3 Q Now, Exhibit 51 is case reports in</p> <p>4 ophthalmology. And it talks about an overwhelming desire to be</p> <p>5 blind; similarities and differences between Body Integrity</p> <p>6 Identity Disorder and a wish for blindness. Have you ever heard</p> <p>7 of that phenomenon, a patient that wanted to be blind?</p> <p>8 A This just reminds me that nobody wants to</p> <p>9 be someone's unusual case. Because everybody has got an unusual</p> <p>10 case that they want to write up and send it in as a case report.</p> <p>11 This would be one of those.</p> <p>12 Q Okay.</p> <p>13 A So that's just a long way of saying no,</p> <p>14 I've never heard of this.</p> <p>15 Q You don't think this case report is legit?</p> <p>16 A I didn't say that. I just have never</p> <p>17 heard of a case of somebody coming in and wanting to be blind.</p> <p>18 I have seen hysterical blindness as a psychiatrist, which is a</p> <p>19 different condition than what's being discussed here. Five</p> <p>20 people total.</p> <p>21 (EXHIBIT 51 WAS FILED.)</p> <p>22 BY MR. JOHNSON:</p> <p>23 Q Hand you Exhibit 52. Tell me what that</p> <p>24 is, please.</p> <p>25 A Appears to be a paper that I wrote in 1988</p>	<p style="text-align: right;">Page 92</p> <p>1 A Okay. Because I've not seen Dr. Seffin's</p> <p>2 deposition. So I don't know what he was asked.</p> <p>3 Q That's fine. I'm asking you.</p> <p>4 A So can you repeat the question?</p> <p>5 Q Do you believe that Christians are bigoted</p> <p>6 and discriminatory toward the LGBT population?</p> <p>7 A I think that that is an overly broad</p> <p>8 generalization. I think that there are Christians and non</p> <p>9 Christians who are overly bigoted and discriminatory towards</p> <p>10 transgender people, gay people, black people, hillbillies,</p> <p>11 people who are different.</p> <p>12 Q Okay. Of course there are a lot of them</p> <p>13 who aren't.</p> <p>14 A I'm sorry?</p> <p>15 Q There's a lot of them who aren't.</p> <p>16 A A lot of them --</p> <p>17 Q Christians and non Christians who are not</p> <p>18 bigoted or discriminatory.</p> <p>19 A Absolutely. I agree.</p> <p>20 Q Okay. And you're not part of a fringe</p> <p>21 group just by virtue of the fact you're a Christian, right?</p> <p>22 A Not in the United States.</p> <p>23 MR. JOHNSON: Let me look at my notes. I</p> <p>24 may be done.</p> <p>25 (A recess was had.)</p>
<p style="text-align: right;">Page 91</p> <p>1 when I was in training as a psychiatry resident at Wright State</p> <p>2 University.</p> <p>3 Q And you submitted that to who?</p> <p>4 A Jefferson Journal of Psychiatry.</p> <p>5 Q It was accepted?</p> <p>6 A It was.</p> <p>7 Q Peer-reviewed?</p> <p>8 A I believe so.</p> <p>9 Q Okay. You cited it on your resume?</p> <p>10 A I believe so.</p> <p>11 (EXHIBIT 52 WAS FILED.)</p> <p>12 BY MR. JOHNSON:</p> <p>13 Q All right. I want to switch gears on you</p> <p>14 a little bit here. There's been a lot made of the fact that Dr.</p> <p>15 Seffin (phonetic) and Dr. Roos are Christians. Do you believe</p> <p>16 that Christians are bigoted and discriminatory towards LGBT</p> <p>17 people?</p> <p>18 A When you say a lot has been made of them</p> <p>19 being Christians, I don't know that that's -- I don't know that</p> <p>20 that's a fact. Are you presenting that to me that's a fact?</p> <p>21 Q Well, there were a lot of questions put to</p> <p>22 them what they believe, whether or not their religious beliefs</p> <p>23 --</p> <p>24 A Questions put to them by who?</p> <p>25 Q The plaintiff's lawyers.</p>	<p style="text-align: right;">Page 93</p> <p>1 BY MR. JOHNSON:</p> <p>2 Q What you told me off the record.</p> <p>3 A Counsel had asked me on break to look at</p> <p>4 the CMS 2016 document and to respond as to whether any papers</p> <p>5 that I had authored or co-authored were included in here. And</p> <p>6 in looking at the reference list, I found at least one that was.</p> <p>7 Q Give me the exhibit number.</p> <p>8 A Exhibit 41.</p> <p>9 Q And the page?</p> <p>10 A Page is whatever this -- 52.</p> <p>11 Q And which article?</p> <p>12 A The last one.</p> <p>13 Q What was the year of it?</p> <p>14 A 2012.</p> <p>15 MR. JOHNSON: Okay. All right. Thank</p> <p>16 you.</p> <p>17 (A recess was had.)</p> <p>18 MR. JOHNSON: I'm done.</p> <p>19 EXAMINATION BY</p> <p>20 MR. BLOCK:</p> <p>21 Q I just have one, maybe two. Do you recall</p> <p>22 how in response to Mr. Johnson's questions you described the</p> <p>23 2016 CMS memo as a snapshot, a historical snapshot?</p> <p>24 A Yes.</p> <p>25 Q And you had indicated that studies had</p>

<p style="text-align: right;">Page 94</p> <p>1 been conducted after the time period analyzed by the CMS report?</p> <p>2 A Right. So the CMS reports, although</p> <p>3 published in 2016, relies on information that was only published</p> <p>4 and available probably to the year before that. So I would say</p> <p>5 '14 or '15 would be the cutoff where they would have had</p> <p>6 actually been able to get it into the 2016 report. So there</p> <p>7 have been things -- it's an ongoing evolving field like other</p> <p>8 areas of medicine, psychiatry and surgery. So this is a field</p> <p>9 that is evolving and progressing as well. And there have been</p> <p>10 new reports that I'm pretty convinced that they would have</p> <p>11 included had they been available.</p> <p>12 Q And what reports are those?</p> <p>13 A One of them -- of the ones I mentioned</p> <p>14 earlier, and the first author in one of the papers is</p> <p>15 Vandergrift (phonetic), and I believe the year was 2017. And</p> <p>16 it's the European ENIGI, European Network for the Investigation</p> <p>17 of Gender Incongruence. And it's the multi-country</p> <p>18 collaborative study that involves pre tests, post test data</p> <p>19 following patients prospectively who report to any of these</p> <p>20 countries gender clinics whether they have gender dysphoria or</p> <p>21 not. It's just based on who shows up and says that they want to</p> <p>22 be evaluated.</p> <p>23 Some of those -- most of those people have</p> <p>24 gender dysphoria but some of them do not. They just show up and</p> <p>25 present for care. And then they study those people</p>	<p style="text-align: right;">Page 96</p> <p>1 treatment. That's another one.</p> <p>2 A paper that -- well, I was going to</p> <p>3 mention the Cole paper where they followed 435 patients before</p> <p>4 and after treatment for suicide attempts. I believe that was</p> <p>5 already referenced in there. And they found that in male to</p> <p>6 female patients -- female to male patients, it dropped from</p> <p>7 21 percent before treatment with hormones to zero percent after</p> <p>8 treatment with hormones. But I believe that's already</p> <p>9 referenced but not mentioned in other work.</p> <p>10 There was a paper by Greta Bauer,</p> <p>11 B-A-U-E-R, from Canada that was not -- I don't believe it was a</p> <p>12 prospective study. But it was a study looking at reduction and</p> <p>13 suicidality for Canadian patients with gender dysphoria who got</p> <p>14 treatment versus who had not. And those who had got treatment</p> <p>15 had clear reductions in suicidality and depression. Those are</p> <p>16 the ones that come to mind. There are others. But off the top</p> <p>17 of my head, that's what I can remember.</p> <p>18 Q And there were some questions about how --</p> <p>19 about why the 2016 CMS memo wasn't included in your original</p> <p>20 declaration. But the 2014 decision by the HHS board was</p> <p>21 included. Do you see any contradiction between the 2014</p> <p>22 decision and the 2016 decision?</p> <p>23 A Well, of course, there are a lot of things</p> <p>24 that were not included in my reports, including some of the</p> <p>25 studies that I just mentioned. But, no, I don't see any</p>
<p style="text-align: right;">Page 95</p> <p>1 prospectively, including the people who are not actually getting</p> <p>2 treatment. So they looked at people who are not involved or who</p> <p>3 have dropped out. That's one.</p> <p>4 And the results of those studies, they're</p> <p>5 ongoing. And they'll be presenting more of that information at</p> <p>6 the next WPATH meeting in November. But up to the point what</p> <p>7 they have presented is that both cross-sex hormones and standard</p> <p>8 of care sex reassignment surgery or gender confirmation surgery</p> <p>9 are associated with significant decreases in depressive</p> <p>10 symptomatology, symptoms of gender dysphoria, body</p> <p>11 dissatisfaction scores, other things that are actually scaled</p> <p>12 and scored using measures before and after. And it's ongoing</p> <p>13 prospectively. That's one.</p> <p>14 A second one is a paper by Tucker, is the</p> <p>15 first author, published just in 2018. And this is on veterans.</p> <p>16 So the population that I specifically have been studying is</p> <p>17 veterans. I was not an author or co-author on the Tucker paper,</p> <p>18 but it's a subset of the veterans that I reported on previously.</p> <p>19 And this subset of veterans, they're looking at patients who</p> <p>20 accessed hormones and chest surgery and genital surgery and</p> <p>21 looked at depression and suicidality and some other parameters</p> <p>22 and found that the patients who got the full treatment of</p> <p>23 transition-related medical interventions, which is the term they</p> <p>24 use in that paper, TRMI, had significant high large effect</p> <p>25 levels of reductions in suicidality and depression after</p>	<p style="text-align: right;">Page 97</p> <p>1 fundamental difference between the two in that there's still</p> <p>2 both recommending that individualized assessments need to be</p> <p>3 made for any given patient, which that's the standard of care as</p> <p>4 far as I'm concerned for all healthcare. And that in properly</p> <p>5 selected individuals, that sex reassignment surgery or their</p> <p>6 terminology to the same effect, could be appropriate and</p> <p>7 medically necessary for those patients.</p> <p>8 MR. BLOCK: Nothing further for me.</p> <p>9 MR. JOHNSON: Nothing for me.</p> <p>10 MR. BLOCK: Great. So you're going to be</p> <p>11 given a chance to see the transcript of the</p> <p>12 deposition, and you have an opportunity to review it</p> <p>13 and to make any corrections. And so I'd recommend</p> <p>14 that you do that.</p> <p>15 THE WITNESS: I wish to do that.</p> <p>16 MR. BLOCK: Excellent.</p> <p>17 MR. JOHNSON: Off the record.</p> <p>18 AND FURTHER DEPONENT SAITH NOT.</p> <p>19 DR. GEORGE R. BROWN, M.D.</p> <p>20 (Start time 9:00, end time 12:15.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>